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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ISABEL A. CHAVEZ,)	Case No. CV 11-06388-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

Plaintiff Isabel Chavez seeks judicial review of the Commissioner's denial of her application for disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). For the reasons discussed below, the Commissioner's decision is reversed, and this action is remanded for further proceedings.

I. BACKGROUND

Plaintiff was born on August 20, 1977. (AR at 63). She filed an application for DIB and SSI in November 2007, alleging disability beginning December 1, 2006 due to lower back and neck pain, depression, and Asperger's Disorder. (AR at 59, 67, 126). The Social Security Administration denied Plaintiff's application

1 initially on April 17, 2008. (AR at 59, 67-71).

2 A hearing was held before Administrative Law Judge ("ALJ")
3 Robert S. Eisman on December 7, 2009. (AR at 30). Plaintiff, who
4 was represented by counsel, testified at the hearing, as did a
5 vocational expert ("VE"). (AR at 21). On December 17, the ALJ
6 issued a decision denying Plaintiff's application. (AR at 21-30).
7 The ALJ found that Plaintiff suffers from a mood disorder, not
8 otherwise specified, and a history of back pain, but that she
9 retains the residual functional capacity ("RFC") to perform medium
10 work limited to simple routine and repetitive tasks performed in a
11 low stress setting, and which does not require more than occasional
12 interaction with the public or co-workers. (AR at 24-25). The ALJ
13 concluded that while Plaintiff is unable to perform any past
14 relevant work, she is able to perform jobs that exist in
15 significant numbers in the national economy and therefore is not
16 disabled. (AR at 28-29). The Appeals Council denied review on June
17 30, 2011 (AR at 2-4).

18 Plaintiff commenced this action for judicial review on
19 September 21, 2011. The parties filed a joint statement of disputed
20 issues ("Joint Stip.") on April 3, 2012. Plaintiff contends that
21 the ALJ gave insufficient weight to the opinion of Rick Williamson,
22 Ph.D., Plaintiff's treating psychologist. (Joint Stip. at 4).
23 Plaintiff seeks reversal and payment of benefits, or alternatively,
24 remand for further administrative proceedings. (Joint Stip. at 23).
25 Defendant requests that the ALJ's decision be affirmed or, if the
26 Court finds that the ALJ committed reversible error, that the Court
27 remand for further administrative proceedings. (Joint Stip. at 23).

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1 **II. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the
3 Commissioner's decision to deny benefits. The Commissioner's or
4 ALJ's decision must be upheld unless "the ALJ's findings are based
5 on legal error or are not supported by substantial evidence in the
6 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
7 1990); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).
8 Substantial evidence means such evidence as a reasonable person
9 might accept as adequate to support a conclusion. *Richardson v.*
10 *Perales*, 402 U.S. 389, 401 (1971); *Widmark v. Barnhart*, 454 F.3d
11 1063, 1066 (9th Cir. 2006). It is more than a scintilla, but less
12 than a preponderance. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,
13 882 (9th Cir. 2006). To determine whether substantial evidence
14 supports a finding, the reviewing court "must review the
15 administrative record as a whole, weighing both the evidence that
16 supports and the evidence that detracts from the Commissioner's
17 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996).
18 "If the evidence can support either affirming or reversing the
19 ALJ's conclusion," the reviewing court "may not substitute its
20 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

21
22 **III. DISCUSSION**

23 **A. The ALJ Failed to Give Appropriate Weight to the Treating**
24 **Physician's Opinion**

25 Plaintiff contends that the ALJ improperly rejected the
26 opinion of her treating psychologist, Dr. Williamson. (Joint Stip.
27 at 4-15). Dr. Williamson began treating Plaintiff for various
28 mental health issues in 2003. (AR at 311). In a Mental Health

1 Residual Functional Capacity Questionnaire completed on February 5,
2 2009 (the "Questionnaire"), Dr. Williamson diagnosed Plaintiff as
3 having Asperger's Disorder, major depression, and attention deficit
4 hyperactivity disorder, with a Global Assessment of Functioning
5 ("GAF") score of 50. (AR at 311). He found that Plaintiff had
6 extreme and marked limitations in multiple areas of work-related
7 functions, including understanding and memory, sustained
8 concentration and persistence, and social interaction. (AR at 314-
9 315). In contrast to Dr. Williamson's findings of extreme and
10 marked limitations, examining psychiatrist Jobst Singer, MD, who
11 evaluated Plaintiff on March 19, 2008, concluded that Plaintiff
12 does not suffer from significant impairments. (AR at 281-82).

13 The Commissioner is directed to weigh medical opinions based
14 in part on their source, specifically, whether proffered by
15 treating, examining, or non-examining professionals. *Lester v.*
16 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). Generally, more weight
17 is given to the opinion of a treating professional, who has a
18 greater opportunity to know and observe the patient as an
19 individual, than the opinion of a non-treating professional. See
20 *id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996).

21 The Commissioner must also consider whether a medical opinion
22 is supported by clinical findings and is contradicted by other
23 medical evidence of record. If the opinion of a treating or
24 examining medical professional is uncontradicted, the Commissioner
25 may reject it only for "clear and convincing" reasons supported by
26 substantial evidence in the record. See *Lester*, 81 F.3d at 831. If
27 the opinion is contradicted by another medical source, the
28 Commissioner may reject it for "specific and legitimate" reasons

1 supported by substantial evidence. *Lester*, 81 F.3d at 830. When a
2 treating professional's opinion is contradicted by an examining
3 professional's opinion, which is supported by different independent
4 clinical findings, the Commissioner may resolve the conflict by
5 relying on the latter. See *Andrews v. Shalala*, 53 F.3d 1035, 1041
6 (9th Cir. 1995); see also *Orn v. Astrue*, 495 F.3d 625, 632 (9th
7 Cir. 2007) (ALJ may reject opinion of treating physician in favor
8 of examining physician whose opinion rests of independent clinical
9 findings).

10 The ALJ rejected Dr. Williamson's opinion, but failed to state
11 adequate reasons for doing so. (AR at 25). Most seriously, the ALJ
12 rejected Dr. Williamson's conclusion that Plaintiff suffers from
13 Asperger's Disorder, explaining that there was no diagnosis that
14 Plaintiff suffered from the disorder during the relevant time
15 period.(AR at 28, 311). However, while the objective testing
16 verifying Plaintiff's diagnosis of Asperger's disorder was
17 completed in 2006, prior to the alleged onset of disability, (AR at
18 315), this fact is irrelevant as according to both the National
19 Institute of Health and the Mayo Clinic, Asperger's Disorder is not
20 a curable mental condition.¹ Moreover, Asperger's Disorder is
21 repeatedly mentioned in Plaintiff's treatment records throughout
22 the relevant time period. (AR at 336, 337, 343, 344, 348, 361,
23 375). The ALJ also observed that a discharge summary completed
24 September 19, 2008, "did not refer to Asperger's Disorder, which
25 indicates that it was ruled out." (AR at 27). Yet while the

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27 ¹ <http://www.ninds.nih.gov/disorders/asperger/asperger.htm>;
28 <http://www.mayoclinic.com/health/aspergers-syndrome/DS00551/DSECTION=treatments-and-drugs>

1 diagnosis section of the summary does not include Asperger's
2 Disorder, the same page explains that in her final appointment
3 before discharge, a plan had been developed "to have interventions
4 centered on client's Asperger's disorder." (AR at 344). Therefore,
5 the summary does indeed refer to Asperger's. To the extent the ALJ
6 thought there was some ambiguity given its absence from the
7 diagnosis section of the summary, he should have contacted Dr.
8 Williamson for clarification. *See Webb v. Barnhart*, 433 F.3d 683,
9 687 (9th Cir. 2005) ("The ALJ's duty to supplement a claimant's
10 record is triggered by ambiguous evidence, the ALJ's own finding
11 that the record is inadequate or the ALJ's reliance on an expert's
12 conclusion that the evidence is ambiguous"). Thus, the ALJ's
13 rejection of Dr. Williamson's finding that Plaintiff suffers from
14 Asperger's Disorder was not supported by substantial evidence in
15 the record. As such, Dr. Williamson's diagnosis of Asperger's
16 disorder does not itself constitute a legitimate basis for
17 rejecting his opinion as to Plaintiff's RFC.

18 The ALJ also explained he was giving little weight to Dr.
19 Williamson's RFC assessment because it "is so extreme as to lack
20 credibility in that it is inconsistent with the claimant's
21 treatment history." (AR at 28). The ALJ did not explicitly state
22 which aspects of the treatment history were inconsistent with Dr.
23 Williamsons' finding, but earlier in the opinion he gave multiple
24 reasons for rejecting Plaintiff's subjective complaints centered on
25 the treatment history. (AR at 26-27). These reasons include that an
26 initial assessment from May 2008 gave Plaintiff a GAF score of 58,
27 that Plaintiff has not been taking any prescription psychotropic
28 medications since 2005, has not required any psychiatric

1 hospitalizations, exquisite therapies, or any other extraordinary
2 treatments, and has been seeing a psychologist only once a month.
3 (AR at 27). However, it is difficult to determine whether the ALJ's
4 conclusion that the treatment record did not match Dr. Williamson's
5 opinion can be separated from the ALJ's unsupported finding that
6 Plaintiff does not suffer from Asperger's Disorder. For example, it
7 is not clear that the treatment the ALJ found to be lacking is
8 appropriate for a claimant with Asperger's. See, e.g., National
9 Institutes of Health, [http://www.ninds.nih.gov/disorders/
10 asperger/asperger.htm#Is_there_any_treatment](http://www.ninds.nih.gov/disorders/asperger/asperger.htm#Is_there_any_treatment). It is the ALJ's
11 responsibility to provide "specific and legitimate" reasons
12 supported by substantial evidence for rejecting a treating
13 physician's opinion. Here, where the ALJ's stated reason, that the
14 treating history does not support Dr. Williamson's opinion, is
15 premised on an unreasonable rejection of one of Plaintiff's key
16 diagnosis, the Court cannot find that the reason is supported by
17 substantial evidence.

18 Moreover, to the extent the ALJ's rejection of Dr.
19 Williamson's opinion was based on Dr. Singer's opinion, this
20 reliance was improper because Dr. Singer was not provided with
21 Plaintiff's medical records to review. (AR at 279). The regulations
22 require that a consultative examiner be given any necessary
23 background information about the plaintiff's condition. 20 C.F.R.
24 § 404.1517. Background information is essential because
25 consultative exams are utilized "to try to resolve a conflict or
26 ambiguity if one exists." 20 C.F.R. § 404.1519a(a)(2). Because Dr.
27 Singer evaluated Plaintiff without a complete access to her medical
28 records, Dr. Singer's opinion does not constitute substantial

1 evidence justifying rejection of the opinion of Plaintiff's
2 treating physician. See, e.g., *Jackson v. Astrue*, No. CIV
3 S-10-2401, 2012 WL 639304, at *4 (E.D. Cal. Feb. 24, 2012) (finding
4 that the ALJ had erred in assigning significant weight to [the
5 examining physician's] opinion because this physician was not
6 provided plaintiff's available medical records as required by 20
7 C.F.R. §§ 404.1517, 416.917); *Pruitt v. Astrue*, 2010 WL 1330164, at
8 *4-5 (C.D. Cal., March 31, 2010) (requiring remand where the ALJ
9 relied on consultative psychologist's opinion who did not
10 completely review plaintiff's medical records).

11 Accordingly, none of the ALJ's stated reasons for rejecting
12 Dr. Williamson's opinion are supported by substantial evidence in
13 the record.

14
15 **IV. Conclusion**

16 As a general rule, remand is warranted where additional
17 administrative proceedings could remedy defects in the
18 Commissioner's decision. See *Harman v. Apfel*, 211 F.3d 1172, 1179
19 (9th Cir. 2000). In this case, remand is appropriate to properly
20 consider Dr. Williamson's opinion in light of Plaintiff's diagnosis
21 of Asperger's disorder, and to fully develop the record.

22 Accordingly, the decision of the Commissioner is reversed, and
23 this action is remanded for further proceedings consistent with
24 this Memorandum Opinion.

25 Dated: April 11, 2012

26 **MARC L. GOLDMAN**

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Marc L. Goldman
United States Magistrate Judge